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December 14, 1999

EX PARTE OR LATE FILED

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

RECEIVED

DEC 14 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WT Docket No. 99-168
Written Ex Parte Presentations
Service Rules for the 746-764 and 776-794 MHz Bands,
And Revisions to Part 27 of the Commission's Rules

Dear Ms. Salas:

Transmitted herewith for filing in the above-referenced proceeding are two copies of a written *ex parte* presentation that was delivered this day to Chairman Kennard and the other Commissioners and FCC officials listed on the attached as receiving copies of this presentation.

Sincerely,



Charles W. Logan

Enclosure

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December 14, 1999

BY HAND

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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DEC 14 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Written *Ex Parte* Communication
Service Rules for the 746-764 and 776-794 MHz Bands,
And Revisions to Part 27 of the Commission's Rules
WT Docket No. 99-168

Dear Chairman Kennard:

As a result of discussions with the Commissioners, the Commission staff, and the public safety community, FreeSpace Communications (FreeSpace) submits this letter to state its willingness, as a licensee of the guard bands, to comply with the interference protection rules, including frequency coordination, that Motorola, Inc. has proposed in this proceeding for operations in the guard band spectrum adjacent to the public safety spectrum bands. This should eliminate any concern regarding the differences between the Motorola and FreeSpace guard band proposals that have previously been submitted in terms of their respective capabilities for protecting public safety communications from interference. It is also consistent with FreeSpace's previous commitment to comply with any interference protection rules the Commission and the public safety community deem appropriate for services operating in the guard bands.

In addition, to the extent the Commission believes it is important to address the needs of private radio users in this proceeding, FreeSpace would support a requirement that licensees of the guard bands dedicate a portion of their capacity or network bandwidth towards meeting these needs. Systems such as the FreeSpace system use state-of-the-art wireless networking techniques (e.g., packet-based pico cells) that are greatly more efficient than traditional PMRS systems. This superior performance would enable such systems both to provide consumers new wireless broadband services and at the same time more than accommodate private radio needs compared to the service they would receive if these guard bands were set aside exclusively for traditional PMRS systems. This approach will promote far more efficient use of the spectrum than an exclusive private radio set-aside as proposed by Motorola.

In a number of comprehensive technical filings submitted in this proceeding, FreeSpace has proposed a range of safeguards, including stringent power spectral density and out-of-band emissions limits, to ensure that licensees operating in the guard bands do not cause interference to adjacent public safety operations. FreeSpace remains confident that these measures can achieve this important objective. FreeSpace, however, has also made clear that it stands ready and willing to comply with any technical rules the Commission and the public safety community believe is appropriate to protect public safety communications.

Consistent with this commitment, FreeSpace is willing to comply with the technical limits Motorola has proposed for operations in the guard bands. Motorola, which has made a competing guard band proposal in this proceeding, has recently submitted a set of proposed rules that include a set of interference safeguards governing operations in the guard bands.¹ As a licensee of the guard bands, FreeSpace would comply with these safeguards. In particular,

- FreeSpace would comply with power limits set forth in Motorola's proposed section 27.50(c). Indeed, FreeSpace has proposed much more stringent power limits for services operating in the guard bands.
- FreeSpace would comply with the out-of-band emissions limits set forth in Motorola's proposed section 27.53(e)-(h).² FreeSpace has in fact proposed more stringent limits in this area as well.³
- FreeSpace would comply with the frequency coordination procedures that Motorola has proposed for systems operating in the guard bands. Thus, as a licensee of the guard bands, FreeSpace would develop frequency coordination procedures in cooperation with the FCC's designated frequency coordinator of the public safety allocation in the 700 MHz band in order to protect public safety operations. FreeSpace would provide documentation regarding these procedures on a case-by-case basis, and also cooperate in the selection and use of frequencies in order to reduce interference and cooperate to resolve any interference through mutually satisfactory arrangements.

FreeSpace embraces these rules, or any other rules the Commission and the public safety community believes are appropriate, to demonstrate its willingness to implement and operate its system in a manner to protect public safety communications. The Commission can and should adopt such rules, whether in the form of Motorola's proposal

¹ See Letter of Leigh Chinitz, Motorola, WT Docket No. 99-168 (filed Dec. 2, 1999).

² Motorola's proposal references section 90.543 of the Commission's rules, which incorporates emissions limits set forth in bandwidth tables that range from 6.25 kHz to 150 kHz. FreeSpace has discussed with the FCC staff the need to revise these bandwidth tables so that they include wider bandwidth systems.

³ See Letter of Charles Logan, Lawler, Metzger & Milkman, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, WT Docket No. 99-168 (filed Nov. 24, 1999).

or some other appropriate set of rules, but otherwise *not* impose restrictions on how licensees can use this spectrum.

Motorola and the private radio industry, in contrast, are urging the FCC to go beyond setting technical rules to prevent interference and to set aside the guard band spectrum exclusively for private radio uses. Predictably, they have attacked FreeSpace's proposal to open up the bidding for the guard bands by claiming that FreeSpace, or, for that matter, *any* commercial service, cannot operate in the guard bands in a manner that protects public safety communications.⁴ Motorola would have the Commission believe that it is an engineering impossibility to design a set of technical rules that would allow commercial services to operate in a spectrum that Congress has expressly designated for "commercial use."

This is simply not true. The Commission has long experience in establishing technical rules to prevent interference among users of the airwaves. Indeed, this lies at the heart of the FCC's mandate. It is dangerous to confuse this mandate with efforts by particular sectors of private industry who seek to shape the Commission's spectrum licensing policies in ways that benefit their own selfish interests. As the "traffic cop" of the airwaves, the Commission must of course establish the rules of the road to prevent interference. But Motorola's proposal is akin to having the rules of the road not only encompass speed limits and lane dividers, but also a restriction that only 1958 Chevrolet station wagons can drive in the right lane.

Motorola's proposal should be viewed for what it is: a transparent attempt to manipulate the licensing rules at issue in this proceeding so that the private radio industry does not have to bid against other potential users of the guard band spectrum. To be sure, private radio parties maintain that private radio communications serve property protection and health and safety needs of private industry.⁵ But commercial services offer substantial public benefits as well. For example, one report estimates that nearly 98,000 calls a day (more than 35 million per year) are made to 911 and other emergency numbers from wireless telephones.⁶ Moreover, commercial wireless services such as the

⁴ Although Motorola and some private radio interests, in their effort to receive a special spectrum set-aside, have claimed that FreeSpace's proposal would not protect public safety communications, these claims are unfounded and, in some cases, based on mischaracterizations of the record. For example, Dataradio has asserted that "[a]t a recent meeting of the National Coordination Committee in New York ..., the FreeSpace representative publicly stated that while its proposal protects public safety base stations, a plan to protect mobile and portable units has not yet been developed." Letter of Albert Catalano to William E. Kennard, Chairman, FCC, at 4, WT Docket No. 99-268 (filed Nov. 29, 1999). This is simply wrong. FreeSpace did make a presentation to the NCC, but in that presentation it assured the public safety community it would provide strong interference to public safety base *and* mobile and portable units.

⁵ See Letter of Allen Gerth, Mobilcomm, Inc. to Magalie Roman Salas, FCC Secretary, WT Docket No. 99-168 (filed Nov. 26, 1999).

⁶ Declaration of Gregory L. Rosston on behalf of Nextel Communications, Inc. in WT Docket No. 99-87, at 6 (*citing* World of Wireless Communications Frequently Asked Questions & Fast Facts, http://wow-com.com/consumer/faqs/faq_driving.cfm).

FreeSpace system offer consumers enormous benefits in terms of access to the internet and state-of-the-art telecommunications technologies.

Motorola's proposal is not about serving the broader public interest or protecting public safety operations from interference. It is about lobbying for government policies that favor particular radio equipment suppliers and private industry groups, some of which are among the largest corporate conglomerates in the world.⁷ It is also worth noting that private radio users have already been assigned a substantial amount of spectrum for their exclusive needs, and that their needs can also be met through a number of commercial services that are currently available, some of which have expressed interest in bidding for spectrum in the commercial 700 MHz bands.⁸

In fact, in its October 13, 1999 letter to the Commission, FreeSpace stated that its "system will provide another option [to private radio users], since it is well suited for point-to-multipoint voice and data dispatch communications."⁹ To the extent the Commission believes it is important to address the needs of private radio users in this proceeding, it should require licensees of the guard bands to meet these needs by dedicating a portion of their capacity or network bandwidth for private radio use. The technology FreeSpace has developed uses state-of-the-art wireless networking techniques (e.g., packet-based pico cells) that are well over 100 times more efficient than traditional PMRS systems. This superior performance would enable a system using such technologies both to provide consumers new wireless broadband services and at the same time more than accommodate private radio needs compared to the service they would receive if these guard bands were set aside exclusively for traditional PMRS systems.

An approach that establishes a service requirement to address private radio needs is far superior to an approach that arbitrarily imposes service restrictions. The former provides the licensee flexibility and gives it an incentive to employ technologies that make the most efficient use of the spectrum that can benefit both private and commercial consumers alike. The latter, in contrast, undermines such incentives by dictating that the spectrum can *only* be used for private radio uses.

The Commission should consequently reject Motorola's proposal for an exclusive set aside for private radio. It is, as the Cellular Telecommunications Industry Association recently stated, contrary to the statutory mandate that this spectrum be allocated for "commercial use."¹⁰ It would also represent a large step backward from the

⁷ Reply Comments of Nextel Communications, Inc. in WT Docket No. 99-168, at 3 (filed Aug. 13, 1999).

⁸ *Id.* at 4.

⁹ Letter of Ruth Milkman, Lawler, Metzger & Milkman, to Magalie Roman Salas, FCC Secretary, WT Docket No. 99-168, at 10 (filed Oct. 13, 1999).

¹⁰ See Letter of Dustun Ashton, CTIA, to Magalie Roman Salas, WT Docket No. 99-168 (filed Dec. 10, 1999). See also Letter of Ruth Milkman, Lawler, Metzger & Milkman, to Magalie Roman Salas, FCC Secretary, WT Docket No. 99-168 (filed Oct. 27, 1999).

Commission's recent efforts to promote efficient spectrum management policies, and would deny consumers the opportunity to enjoy exciting new telecommunications services. It would also significantly reduce the revenues raised in the auction of the guard band spectrum simply to benefit a particular segment of private industry.

The Commission has a rare opportunity in this proceeding to ensure that frequencies below 1 GHz are put to their best use through an open auction process. It should seize this opportunity and thereby promote the wireless services that will be essential as this nation enters the 21st century and the information age.

Sincerely,



Ruth M. Milkman
Charles W. Logan

cc:	Commissioner Ness	Commissioner Furchtgott-Roth
	Commissioner Powell	Commissioner Tristani
	James Schlichting	Kathleen Ham
	Kris Monteith	Stanley Wiggins
	Tom Stanley	Ari Fitzgerald
	Mark Schneider	Bryan Tramont
	Peter Tenhula	Adam Krinsky
	Robert Pepper	Howard Shelanski
	Dale Hatfield	Julius Knapp
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	Ronald Netro	